

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 87102(d)

Specific Purpose:

The revision date of the brochure mentioned in this section is being amended due to the amendment of the publication date of the same brochure mentioned in Section 87469(a).

Factual Basis:

This amendment is necessary because there was an oversight that this section was not originally being amended through this rulemaking. The brochure mentioned in Section 87469(a) is incorporated by reference in Section 87102(d).

Section 87455(b)(8)

Specific Purpose:

This regulation is added to accept and retain persons who have been diagnosed as terminally ill and who have obtained the services of a hospice certified in accordance with federal Medicare conditions of participation and licensure as defined in Health and Safety (H&S) Code section 1569.73.

Factual Basis:

This addition is necessary for clarity and consistency with H&S Code section 1569.73(a), which was added to statute by Assembly Bill (AB) 1961 (Canciamilla), Chapter 109, Statutes of 2002. AB 1961 amended H&S Code section 1569.73(a) to permit a Residential Care Facility for the Elderly (RCFE) to accept as a new resident, a terminally ill person who is already receiving hospice services, if certain conditions are met. Previously, RCFEs were only permitted to retain a resident who becomes terminally ill and initiates hospice services while a resident of the facility. This statutory change increases the care options for terminally ill persons who are receiving hospice services and are otherwise eligible for admittance to a RCFE. This revision is also necessary for clarity and consistency with H&S Code section 1569.73(a) requiring the hospice care waiver provisions specifically for terminally ill individuals to be accepted or retained in a RCFE and for establishing the statutory authority for the waiver.

Handbook Section 87455(d)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensed Program Analyst (LPA), responsible for enforcement in the Community Care Licensing Division (CCLD), to the referenced H&S Code section 1569.73(a) in Section 87455(b)(8). This statute was added as a result of AB 1961 (2002). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of the California Department of Social Services (CDSS). Handbook material is for the ease of reference material and is not “cited” by LPA staff within the CCLD for enforcement purposes.

Section 87465(g)

Specific Purpose:

This regulation is amended to establish the option to contact the resident’s hospice agency to honor advance directives and/or requests regarding resuscitate measures in lieu of calling 9-1-1 in the event of a life threatening emergency when specified conditions are met.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(c), which added new sub-sections and language to statute based on AB 1166 (Berg), Chapter 312, Statutes of 2003. AB 1166 H&S Code section 1569.73(c) now allows a RCFE to contact the hospice agency to honor advance directives and/or requests regarding resuscitative measures in lieu of calling 9-1-1 under specified conditions. The facility has the option to not call emergency response 9-1-1 specifically for terminally ill residents on hospice experiencing a life-threatening emergency directly related to his or her terminal illness when they have an advance directive or request regarding resuscitative measures form on file. Previously, only emergency medical personnel or licensed professionals who were present at the time of the life-threatening emergency were allowed to honor advance directives and/or requests regarding resuscitative measures.

Section 87469(a)

Specific Purpose:

This regulation is being amended to correct a typographical error and correct the reference to the publication date for the Publication 325.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting a typographical error (incorrect inclusion of the date "1/04") and an incorrect revision date for Publication 325 in the initial 45-day notice period.

Section 87469(c)(3)

Specific Purpose:

This regulation is adopted for clarity and consistency in procedure providing the facility the option to not call emergency response 9-1-1 specifically for terminally ill residents on hospice experiencing a life-threatening emergency that is directly related to his or her terminal illness and they have an advance directive and/or request regarding resuscitative measures form on file.

Factual Basis:

This adoption is necessary for clarity and consistency with H&S Code section 1569.73(c) to allow RCFEs to contact the hospice agency to honor advance directives and/or requests regarding resuscitative measures in lieu of calling 9-1-1 under specified conditions, specifically for terminally ill residents experiencing a life-threatening emergency related to their terminal illness and who have elected to forego resuscitation. Please also see the "Factual Basis" under Section 87465(g).

Section 87469(c)(4) renumbered from Section 87469(c)(3)

Specific Purpose/Factual Basis:

This regulation is numbered from Section 87469(c)(3) to Section 87469(c)(4) for clarity in chronology, since the adopted subsection (c)(3) references H&S Code section 1569.73 and the renumbered subsection (c)(4) references H&S Code section 1569.74.

Section 87469(d)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was inaccurate in the original 45-day notice period. The noticed regulations inadvertently deleted "hospice agency and" and capitalized "Health Care Surrogate Decision Maker" without proper underline and strikeout formatting.

Handbook Section 87469(d)

Specific Purpose/Factual Basis:

These Handbook references have been added for the purpose of clarity, consistency and ease of access by the LPAs responsible for enforcement in the CCLD, to the referenced Probate Code section 4780(a). This statute was amended as a result of AB 3000 (2008). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of CDSS. Handbook material is for the ease of reference material and is not “cited” by the LPA staff within CCLD for enforcement purposes.

Section 87615(a)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice and provide justification for the deletion of the cross reference to Section 87455(c).

Factual Basis:

This amendment is necessary for clarity and consistency by correcting text that was incorrect in the original 45-day notice, deleting reference to "the following" and providing the necessity for striking out the cross reference to Section 87455(c). Sections 87615(a)(1)-(6) provide a list of prohibited health conditions. Deleting "the following" clarifies that it is the conditions that are prohibited, not a list of "persons" prohibited. In addition, the cross-reference to Section 87455(c) was deleted to segregate regulatory prohibited health conditions, which under specified circumstances CDSS can waive, with statutory prohibitions which CDSS has no authority to waive.

Section 87616(c)

Specific Purpose:

This regulation is added for clarity and consistency regarding facilities that have been granted a hospice care waiver to remove the need to separately request an individual exception for terminally ill residents who are receiving hospice and may have or will have a restrictive and/or prohibited health care condition.

Factual Basis:

This addition is necessary for clarity and consistency with H&S Code section 1569.73 to remove the duplication of workload and resources in complying with the “written exception” process specifically for terminally ill or prospective terminally ill persons who are receiving hospice care in facilities that have already satisfied the requirements of Section 87632, Hospice Care Waiver. Restrictive and/or prohibited health conditions may be and/or

are summarily included for individuals receiving hospice in accordance with federal Medicare conditions of participation and licensure as defined in H&S Code section 1569.73(a)(2), (a)(3) and (a)(4). A written exception is not required for terminally ill residents or a prospective terminally ill resident who have obtained the services of a certified hospice.

Handbook Section 87616(c)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the Licensed Program Analyst (LPA), responsible for enforcement in the Community Care Licensing Division (CCLD), to the referenced H&S Code section 1569.73(a) in Section 87616(c). This statute was added as a result of AB 1961 (2002). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of the CDSS. Handbook material is for the ease of reference material and is not “cited” by LPA staff within the CCLD for enforcement purposes.

Section 87632(a)

Specific Purpose:

This regulation is amended to correct typographical errors.

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was incorrect in the original 45-day notice and then correcting two typographical errors. The stricken out and underlined text was incorrect in the initial 45-day notice period, as the noticed regulations included typographical errors that were corrected without proper underline and strikeout formatting.

Section 87632(a)(4)

Specific Purpose/Factual Basis:

After comments from the public testimony were reviewed, the department has repealed this regulation as it is determined it is no longer needed based on the amendments made to Section 87632(a). There was a statement in the Supplemental Statement of Reasons that a statement in the Initial Statement of Reasons relating to these regulations was incorrect and was being deleted from the record for clarity. Upon further review, the quoted statement, "This amendment is consistent with the provisions set forth in H&S Code section 1569.73 regarding the execution of a written agreement for the hospice care waiver" was in fact correct and added back into the record. However, because of a public testimony received during the 45-day public comment period, this section is being repealed anyhow.

Section 87632(a)(4) renumbered from Section 87632(a)(5)

Specific Purpose:

This regulation is amended to clarify the regulation added prior to the initial 45-day notice period.

Factual Basis:

This amendment is necessary for clarity and consistency by rephrasing the regulation to be consistent with Sections 87632(a)(1)-(3), clarifying what the licensee is required to submit to CDSS when applying for a hospice care waiver, including a statement by the licensee that they will enter into an agreement with the hospice agency regarding the care plan, as specified. The care plan is specific to the terminally ill resident or prospective resident and hospice agency and cannot be entered into until the resident or prospective resident has decided to obtain hospice services. The substantive portion of this regulation text was added prior to the initial 45-day notice period for clarity and consistency with Health and Safety (H&S) Code section 1569.73(a)(5), which requires the facility to enter into an agreement with the hospice agency regarding the hospice care plan for the terminally ill resident or terminally ill person to be accepted as a resident. Further, the wording of the amendment was corrected to more accurately reflect the intent and language of H&S Code section 1569.73(a)(4). Although this proposed regulation is duplicative of or overlaps H&S Code section 1569.73(a)(4), said duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1(a)(3) by further emphasizing to the user of the regulation the statutory requirement for the hospice to delineate its responsibilities in providing medical intervention related to the terminal illness in its agreement with the facility. In addition, as Section 87632(a)(4) is being repealed, the new Section 87632(a)(5) is being renumbered to the new Section 87632(a)(4).

Section 87632(d)(1)

Specific Purpose:

This regulation is amended to include a written request signed by the resident or prospective resident or the resident or prospective resident's Health Care Surrogate Decision Maker, if any, to allow for the acceptance or retention of the terminally ill resident in the facility while he or she is receiving hospice services.

Factual Basis:

This section was amended so that the signature requirements for written request also applied to residence receiving hospice care prior to admission to at RCFE.

Section 87632(d)(2)

Specific Purpose:

This regulation is amended to require within five working days a written notification to the Department of the name and address of the hospice agency when hospice services have been initiated for residents accepted and/or retained in the facility.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73, which allows RCFE facilities to accept or retain individuals receiving hospice care services. This amendment requires the licensee to notify the Department within five working days of the initiation of hospice services and the name and address of the hospice agency, which is similar to the preexisting requirements for residents of an RCFE who begin to receive hospice care.

Section 87632(e) and 87632(e)(1)

Specific Purpose:

This regulation is amended to correct a typographical error and to delete “substantiating evidence” as a requirement. Section 87632(e) indicates the Department will notify the applicant or licensee of approval or denial within 30 days of receipt of an “acceptable” request.

Factual Basis:

This amendment is necessary for clarity and removes the “substantiating evidence” requirement. The Department will notify the applicant or licensee within 30 days of receipt of a request for a hospice care waiver. When the applicant or licensee is notified of approval or denial of the waiver request, it is implicit that the information provided by the applicant or licensee is “acceptable” by virtue of the Department’s rendering of a decision. Additionally, the “acceptable” documents needed are described in Section 87632(a)(1)-(4).

Section 87632(e)(3)

Specific Purpose/Factual Basis:

This regulation is repealed to remove duplicative notification requirements previously identified in Section 87632(e).

Section 87632(f)

Specific Purpose:

This regulation is being repealed.

Factual Basis:

This amendment is necessary for clarity and consistency by deleting Section 87632(f) which is a general statement regarding liability, while the rest of Section 87632 includes procedural items related to the hospice care waiver application process. In addition, this concept is similarly restated in H&S Code section 1569.73(g), which is provided by reference through Handbook in this section.

Handbook Section 87632(f)

Specific Purpose/Factual Basis:

This handbook reference has been added for the purpose of clarity, consistency and ease of access by the LPA responsible for enforcement in CCLD to the referenced H&S Code section 1569.73(g) and in Section 87632(f). This statute was added as a result of AB 1166 (2003). Providing statute in the regulation as “Handbook” material is at the discretion and formatting preference/style of CDSS. Handbook information is for the ease of reference material and is not “cited” by the LPA staff within CCLD for enforcement purposes.

Section 87633(a)

Specific Purpose:

This regulation is amended to specify that terminally ill persons who are already receiving hospice care services are allowed to be admitted to a RCFE facility. This regulation is also amended to allow a hospice care waiver to include residents who may or may not have a restrictive and/or prohibited health condition if a hospice agreement has been executed between the facility and the hospice agency, whereby, the hospice has agreed to design and provide for care, services and necessary medical intervention related to the terminal illness as necessary to meet the needs of the terminally ill resident as set forth in Section 87616, Exceptions for Health Conditions.

Factual Basis:

This amendment is necessary to comply with H&S Code section 1569.73(a), which permits a RCFE to accept a resident who is terminally ill and who is already receiving hospice services, if certain conditions are met. Additionally, the Department has the authority as referenced in Section 87616, Exceptions for Health Conditions, and as specified in Section 87209, Program Flexibility, to “not require” a written exception for terminally ill residents

who may or may not have a restrictive and/or prohibited health condition if the licensee believes the intent of the law can be met through alternative means.

Section 87633(a)(3)

Specific Purpose:

This regulation is amended to include “prospective residents” in the requirement to contract for hospice services individually or require the prospective resident’s Health Care Surrogate Decision Maker, if any, to contract for hospice services on behalf of the prospective resident, not by the licensee on behalf of the resident or prospective resident. Hospice agency services must be provided by a hospice agency licensed by the state and certified by the federal Medicare program.

Factual Basis:

This amendment is necessary for clarity and consistency to make regulation consistent for existing and/or prospective terminally ill residents receiving hospice services in the requirement to individually contract for hospice services or their Health Care Surrogate Decision Maker, if any, on their behalf.

Section 87633(a)(4)

Specific Purpose:

This regulation is amended to include the requirement to have a written hospice care plan developed for each terminally ill resident or prospective terminally ill resident, prior to the initiation of hospice services or for the continuation of those hospice services, as agreed to by the hospice, the licensee, the resident and/or prospective resident or their Health Care Surrogate Decision maker, if any.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a) to make regulatory requirements consistent for prospective residents who are terminally ill and receiving hospice care services with regulatory requirements for existing residents who are terminally ill and receiving hospice care services. Specifically, this regulatory requirement pertains to the written hospice care plan developed for each terminally ill resident or prospective resident by the hospice agency and agreed to by the licensee and the resident or prospective resident prior to the initiation or continuation of hospice services.

Section 87633(a)(5)

Specific Purpose:

This regulation is amended to make consistent health and safety protections and personal rights requirements for existing residents or prospective residents who are terminally ill and receiving hospice care services.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept a resident who has been diagnosed as terminally ill and who is already receiving hospice services if certain conditions are met. This amendment is also necessary to make consistent regulatory requirements regarding health and safety and the personal rights for existing or prospective residents who are terminally ill and receiving hospice care services.

Section 87633(a)(6)

Specific Purpose:

This regulation is amended to apply to accepted and prospective residents who are diagnosed as terminally ill and receiving hospice care services, requiring the hospice agency and the resident to provide the licensee with all information necessary to allow the licensee to comply with all regulations and assure that the residents' needs will be met.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept a resident or prospective resident who is diagnosed as terminally ill and who is already receiving hospice services if certain conditions are met. This amendment is also necessary to make regulatory requirements consistent for accepted and prospective residents who are terminally ill and receiving hospice. In this case, these regulatory requirements pertain to the hospice agency and the resident providing all necessary information to the licensee to comply with all regulations, and assure the needs will be met for the terminally ill residents or prospective terminally ill residents.

Section 87633(h)(1)

Specific Purpose:

This regulation is being amended to correct regulation text that was incorrect in the original 45-day notice and replace reference to "Advance Health Care Directive, Request to Forego Resuscitative Measures, and/or Do-Not-Resuscitate Form " with "an advance directive and/or request regarding resuscitative measures."

Factual Basis:

This amendment is necessary for clarity and consistency by correcting regulation text that was inaccurate in the original 45-day notice and then amending the regulation to more broadly reference advance directive and/or requests regarding resuscitative measures. The existing text is very specific and does not speak to all available options for residents when making decisions about their medical care. The broader reference to "advance directive and/or request regarding resuscitative measures" allows for all legally permissible documents to be used by residents to make decisions about their medical care.

Sections 87633(h)(5)

Specific Purpose:

This regulation is amended to add protections for the rights of existing residents in requiring the resident's written agreement to share a room with a person who is terminally ill or a prospective resident who is terminally ill, receiving hospice services upon being admitted or retained into the facility. The existing resident as a roommate voluntarily agrees to grant access to the shared living space to hospice caregivers, network of family members, friends, clergy and others.

Factual Basis:

This amendment is necessary to comply with H&S Code section 1569.73(a)(6) to protect the rights of existing residents who will share a room with a person who is accepted or retained in the facility and who is terminally ill receiving or intends to receive hospice care services. This voluntary agreement extends to granting access of the living space to the hospice caregivers, network of family members, friends, clergy and others.

Section 87633(j)

Specific Purpose:

This regulation is amended to remove the requirement of the "exception" process and/or obtaining the Department's approval for admitting or retaining terminally ill residents or prospective terminally ill residents who may or may not have restrictive and/or prohibited health conditions and who are receiving hospice care, provided the restrictive and/or prohibited health conditions are addressed in the hospice care plan under the Hospice Care Waiver.

Factual Basis:

This amendment in regulation is necessary for clarity and consistency in complying with H&S Code section 1569.73, as it applies to the acceptance and retention of residents or prospective residents who are terminally ill and receiving hospice care services in the

facility. The Department's approval of an exception is not required for restrictive and/or prohibited health conditions once a Hospice Care Waiver has been granted and the restrictive and/or prohibited health conditions are addressed in the hospice care plan.

Section 87633(l)

Specific Purpose:

This regulation is amended to include prospective residents accepted by the facility who are terminally ill receiving hospice and may be or may become bedridden.

Factual Basis:

This amendment is necessary for clarity and consistency with H&S Code section 1569.73(a), which permits a RCFE to accept, if certain conditions are met, terminally ill or prospective terminally ill residents receiving hospice care that may be bedridden or may become bedridden. This amended regulation is also necessary for clarity and consistency with H&S Code section 1569.73(h), which requires the licensee to obtain a fire clearance for the safety of all bedridden residents and to make consistent regulatory requirements for existing and prospective residents who are terminally ill, receiving hospice and may be or may become bedridden.

Handbook Section 87633(l)

Specific Purpose/Factual Basis:

This Handbook reference has been added for the purpose of clarity, consistency and ease of access by the LPA responsible for enforcement within CCLD to the referenced H&S Code section 1569.73(h) in Section 87633(l). This statute was added as a result of AB 1166 (2003). Providing statute in the regulation as "Handbook" material is at the discretion and formatting preference/style of CDSS. Handbook information is for the ease of reference material and is not "cited" by the LPA staff within CCLD for enforcement purposes.

b) Identification of Documents Upon Which Department Is Relying

AB 1961 (Canciamilla), Chapter 109, Statutes of 2002

AB 1166 (Berg), Chapter 312, Statutes of 2003

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

These regulations are developed in response to legislation, AB 1961 (Chapter 109, Statutes of 2002) and AB 1166 (Chapter 312, Statutes of 2003), which amended Section 1569.73 of the H&S Code to allow the acceptance of terminally ill persons already receiving hospice care into a RCFE and to allow RCFEs to contact the hospice agency in lieu of calling emergency responders 9-1-1 under specified conditions.

The CDSS determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS does not collect data on the number of individuals receiving hospice care in licensed facilities or the number of calls made to emergency response services. In addition, the changes reflected in these regulations codify statutes that have been in effect since 2002 and 2003 respectively. Since that time, CDSS has not received any facts, evidence, documents, testimony or other evidence to indicate there has been any significant adverse impact on business related to these laws. As such, CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Economic Impact Assessment

The changes reflected in these regulations codify statutes that have been in effect since 2002 and 2003 respectively. While the regulations allow for the acceptance and remittance of residents receiving hospice, as specified, in practice statute already allowed for this for many years. As such, CDSS has determined that the adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. These regulations benefit the health and welfare of California residents by clarifying in regulation that they have a choice in where to live while receiving hospice services, improving the state environment. These regulations have no direct impact on worker safety.

The following documents were relied upon in proposing the regulatory action:

AB 1961 (Canciamilla), Chapter 109, Statutes of 2002

AB 1166 (Berg), Chapter 312, Statutes of 2003

g) Benefits Anticipated from Regulatory Action

Adoption of these regulations will permit the acceptance of terminally ill individuals already receiving hospice care services into a RCFE, and will provide the option for RCFE licensees to notify a terminally ill resident's hospice agency in lieu of calling 9-1-1 during a life threatening emergency directly related to the terminal illness for residents with advance directives and/or requests regarding resuscitative measures. These regulations acknowledge the relationship between the individual and the hospice agency when the individual is actively dying and has elected not to be resuscitated, hence the election of a Do-Not-Resuscitate order. These regulations provide consistency with the RCFE Act in the area of hospice requirements and are consistent with the findings of the Supreme Court decision *Olmstead V. L.C. (1999)* to allow individuals to stay in the least restrictive environment while providing consumer choice.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.

i) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on April 9, 2014 in Sacramento, California. Written testimony was received from the following during the 45-day comment period from February 21, 2014 to 5:00 p.m. April 9, 2014:

1. Section 87469(c)(3)

Comment:

The California Assisted Living Association (CALA) is concerned that the word "regarding" is not specific enough to address existing requests to forego resuscitative measures, and recommends changing the word "regarding" to "forego."

Response:

The Department appreciates this comment. The Department has reviewed your comment but is not amending the regulations as per Probate Code 4780. The Department finds that the term "regarding" is appropriately used in this section as it allows for the inclusion of Physician Orders for Life-Sustaining Treatment (POLST) while not precluding other recognized forms.

Comment:

The California Association for Health Services at Home (CAHSAH) is concerned that RCFEs will call 911, regardless if the emergency is related to the hospice condition because faculty will not be sufficiently or clinically trained to conduct an assessment

and determine what is related to the terminal illness and the course of it. Therefore, CAHSAH recommends rewording section to read:

"...For emergencies not directly related to the expected course of the resident's terminal illness, the facility staff shall immediately telephone the hospice agency."

Response:

The Department appreciates this comment but is not amending the regulations. California Code of Regulations, Title 22, Division 6, Chapter 8 section 87469(c)(1), requires a licensee to immediately call 9-1-1 and present the advance health care directive and/or request regarding resuscitative measures form to the responding emergency medical personnel and identify the resident as the person to whom the order refers. The regulations require licensees to call 9-1-1 in the event of a medical emergency because residential care facilities for the elderly do not typically employ licensed medical professionals with the expertise to determine the nature of the medical emergency. The same holds true for a resident receiving hospice care who sustains an injury or has a medical emergency that is not related to the terminal illness, 9-1-1 must be called.

2. Section 87616(c)

Comment:

CALA recommends removing all references to restricted conditions in Section 87616(c).

Response:

The Department appreciates this comment but is not amending the regulation. The Department wishes to retain the flexibility to require an exception for prohibited and/or restrictive health conditions as required in Section 87616(a). In anticipation of continual changes to the long-term care industry, including the changes in the resident population and need, the Department wishes to retain the flexibility to require exceptions should new conditions or treatments require this level of regulatory oversight.

3. Section 87632(a)(4)

Comment:

CALA believes that this section is unnecessary because there is no longer a restriction on accepting a resident already receiving hospice care. Therefore, they recommend removing this section.

Response:

The Department appreciates this comment and agrees this regulation is no longer needed based on the amendments made to 87632(a). The Department moves to delete 87632(a)(4):

~~(4) A written statement from the licensee that hospice services will only be provided to individuals who are residents of the facility or to prospective residents already receiving hospice services, prior to the initiation of hospice services in the facility.~~

4. Section 87632(d)(1)

Comment:

CALA believes it is unnecessary to have a prospective resident sign a written request before signing other documents related to the admission agreement. Therefore, CALA recommends the section to read:

"A written request shall be signed by each terminally ill resident or prospective resident upon admission, or the resident's or prospective resident's health care surrogate decision maker..."

Response:

The Department appreciates this comment and agrees. This regulation is amended to read:

(1) A written request shall be signed by each terminally ill resident or prospective resident upon admission or by the resident's or prospective resident's Health Care Surrogate Decision maker to allow for his or her acceptance or retention in the facility while receiving hospice services.

5. Section 87632(d)(2)

Comment:

CALA states that the proposed order of the wording in the section is confusing and implies that the licensee must notify the Department when a resident started on hospice, even if outside the facility. Therefore, they recommend having the section to read:

"The licensee shall notify the Department in writing within five working days of the initiation of hospice care services any terminally ill resident in the facility or within five days of admitting a resident already receiving hospice care services. The notice shall include the resident's name and date of admission to the facility and the name and address of the hospice."

Response:

The Department appreciates this comment and agrees. The regulation is amended to read:

- (2) The licensee shall notify the Department in writing within five working days of the initiation of hospice care services ~~in the facility~~ for any terminally ill resident ~~accepted or retained in the facility~~ in the facility or within five working days of admitting a resident already receiving hospice care services. The notice shall include the resident's name and date of admission to the facility and the name and address of the hospice.

6. Section 87633(j)

Comment:

CALA recommends removing the language about restricted conditions in this section.

Response:

The Department appreciates this comment but is not amending the regulation. The Department wishes to retain the flexibility to require an exception for prohibited and/or restrictive health condition as required in Section 87616(a). See Response to Item #2.

Oral testimony was received at the public hearing from the following:

1. Section 87469(c)(3)

Comment:

Jennifer Gabales of CAHSAH states that the association believes that it is more appropriate that the RCFE staff call the hospice agency regarding emergencies not directly related to the resident's terminal illness, rather than call 911.

Response:

The Department appreciates this comment but is not amending the regulations. Please see the response provided for the written testimony to this comment in Item #1.

j) 15-Day Renotice Statement

Pursuant to Government Code section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the April 9, 2014, public hearing. The following comment was received during the 15-day public comment period from January 29, 2015 to 5:00 p.m. February 13, 2015:

1. Section 87632(a)(4)

Comment:

CALA recommends amending this section to read, "A statement by the licensee that an agreement with the hospice agency will be entered into regarding outlining the care, services, and medical intervention to be provided by the hospice agency, and those provided by the licensee within the scope of the RCFE license."

Response:

The Department appreciates this comment and suggested language, but is not amending the regulation at this time. Additional time is warranted to give proper consideration of the full implication of your comments on reducing redundancy and more directly explaining the function of the agreement between the licensee and hospice agency.